



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 26, 2023

IN THE MATTER OF:

Appeal Board No. 627949

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627948, 627949 and 627950, the claimant appeals from the decisions of the Administrative Law Judge filed February 6, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 31, 2020, to November 21, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$1,200 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$8,347.5 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$300 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); charging the claimant with an overpayment of \$878.75 in regular benefits and \$5,197.50 in extended benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive

future benefits by 200 effective days and charging a civil penalty of \$2,406.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were

accorded a full opportunity to be heard and testimony was taken. There was an

appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Additional testimony and evidence should be taken before the issues are decided.

To that end, the Commissioner of Labor is directed to be represented at the remand hearing in order to provide testimony and evidence with respect to whether the claimant certified for benefits on September 6, 13, 20 and 27, 2020, and October 4, 2020, as alleged in the Notice of Determination of Wilful Misrepresentation and, if she did, how many days of work she reported in each of those certifications. The Commissioner shall also be questioned about whether the Certification Record Report, marked as Exhibit 6, is a document kept in the regular course of business; what data it contains and how it was obtained; and whether it can be changed after the data in question is collected. The Commissioner shall also explain how the monetary penalty of \$2,406.25 was calculated.

The claimant and the employer shall be questioned with respect to the number of days that the claimant worked each week during the period of August 31, 2020 through January 17, 2020. The employer shall produce a witness with knowledge of whether its payroll record, marked as Exhibit 5a, is a document kept in the regular course of business, as well as what data it contains and how it was obtained. The claimant shall be confronted with the relevant portions of the employer's payroll record and the Certification Record Report for each of the weeks under review.

The Commissioner of Labor and the employer shall be given an opportunity to cross-examine the claimant's testimony from the original hearing and to object to the exhibits entered into evidence at that hearing. To that end, they should contact the Hearing Section to request either a copy of the transcript or a copy of the hearing recording to review prior to the remand hearing.

The parties may produce any additional witnesses and documents. The Judge shall take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER